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EXAMINER

USTARIS, JOSEPH G

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JIN LU

Appeal 2009-0142
Application 09/745,622
Technology Center 2600

Decided:¹ February 20, 2009

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT, and
CARLA M. KRIVAK, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from a final rejection of
claims 1-15. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date
shown on this page of the decision. The time period does not run from the
Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF CASE

Appellant's claimed invention is directed to a method, system, and module for sending out-of-band (OOB) service information from a data module to a host system such as a set-top box (Spec. 1:5-9).

Independent claim 1, reproduced below, is representative of the subject matter on appeal.

1. A system for sending out-of-band (OOB) service information from a service provider, the system comprising:

a point of deployment (POD) module which receives an in-band (IB) transport stream (TS) including IB TS packets, the POD module including a processor for processing OOB service information from a service provider, constructing OOB TS packets using the OOB service information, identifying unoccupied gaps in the IB TS, inserting the OOB TS packets in the unoccupied gaps and sending the OOB TS packets and the IB TS packets to a set-top box using a transport stream channel; and

wherein the set-top box includes a processor for processing the OOB TS packets.

REFERENCES

Bacon	US 2002/0101991 A1	Aug. 1, 2002 (filed Dec. 4, 2000)
Bertram	US 2003/0103532 A1	Jun. 5, 2003 (filed Dec. 10, 1999)
Vantalón	US 6,628,891 B1	Sep. 30, 2003 (filed Nov. 19, 1999)

The Examiner rejected claims 1-15 under 35 U.S.C. § 103(a) based upon the teachings of Vantalón, Bertram, and Bacon.

Appellant contends the reservation of space inside content stream by a NULL packet, as taught by Bertram, is not the same as the insertion of OOB packets when the system detects a gap in the in-band (IB) transport stream (TS) (Br. 5).²

ISSUE

Did Appellant establish the Examiner erred in finding the NULL packet of Bertram is the same as an unoccupied gap?

FINDINGS OF FACT

1. Appellant's invention is a system for sending out-of-band (OOB) service information from a service provider to a set-top box where a point of deployment (POD) module identifies unoccupied gaps in the in-band (IB) transport stream (TS) and inserts the OOB TS packets into the unoccupied gaps (cl. 1, Br. 5).

2. Bertram teaches a method and apparatus for transport encoding asset data and content data (Abstract). The content data transport stream includes a number of NULL transport packets interspersed with the content data transport packets such that the NULL packets “reserve[s] a portion of the asset data stream” ([¶¶ [0020], [0024]).

PRINCIPLES OF LAW

“[T]he words of a claim ‘are generally given their ordinary and customary meaning.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d

² Appellant does not contest the teachings of Vantalon and Bacon (Br. 5).

1576, 1582 (Fed. Cir. 1996)). Furthermore, the specification is the single best guide to the meaning of a claim term. *Id.* at 1315.

The “broadest reasonable interpretation” rule recognizes that “before a patent is granted the claims are readily amended as part of the examination process.” *Burlington Indus., Inc. v. Quigg*, 822 F.2d 1581, 1583 (Fed. Cir. 1987). Thus, a patent applicant has the opportunity and responsibility to remove any ambiguity in claim term meaning by amending the application. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If the Examiner’s burden is met, the burden then shifts to the Appellant to overcome the *prima facie* case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

The Examiner rejected claims 1-15 under 35 U.S.C § 103 as obvious over Vantalon, Bertram, and Bacon (Ans. 3). Appellant separately argues independent claims 1, 4, 7, 12, however, the arguments all refer to those

provided with respect to claim 1. Thus, the claims are argued together as a group and this rejection is addressed with respect to representative claim 1.

The Examiner finds Vantalon teaches a system for sending out-of-band (OOB) service information from a service provider to an access module for receiving an in-band (IB) transport stream (TS), a processor, and a set-top box. However, Vantalon does not teach or suggest a system or method where the access module sends the OOB data as packets, identifying unoccupied gaps in the IB TS, and inserting the OOB TS packets in the unoccupied gaps, and the access module being a point of deployment (POD) module (Ans. 3). The Examiner then states Bacon teaches that an access module is also known as a POD and that Bertram discloses unoccupied gaps (Ans. 3-4).

Appellant does not contest the Examiners findings with respect to Vantalon or Bacon. Appellant does contest the Examiner's findings with respect to Bertram. Particularly, Appellant argues, "the reservation of space inside the content stream by a NULL packet is not the same as the insertion of OOB packets when the system detects a gap in the IB TS" (Br. 5).

Claim 1 recites, "identifying unoccupied gaps in the IB TS" and "inserting the OOB TS packets in the unoccupied gaps." We look to the Specification to determine the meaning of the term "gap." Page 9, lines 19-21 states, "there is sufficient 'space' between two consecutive TS packets of the original IB TS stream to insert the OOB TS packets." In this instance, "space" is also not defined. Giving this term its broadest reasonable interpretation, "space" can be considered any area between packets, including a NULL. There is nothing in Bertram that identifies the NULL packet as anything other than empty space. Appellant's own definition

provided by Chiariglione's MPEG Systems FAQ, pg.6, states a "NULL packet is a particular undeclared transport packet that belongs to nobody (emphasis added)." Accordingly, if a NULL packet belongs to nobody, it is an unoccupied space/gap. Therefore, the Examiner's position that "a NULL packet is considered an unoccupied gab [sic]" is reasonable. (Ans. 7)

Appellant has not successfully rebutted the Examiner's prima facie case of obviousness. Appellant has not shown the Examiner erred in interpreting a NULL packet as an "unoccupied gap." Thus, the Examiner properly rejected claims 1-15 as obvious over the collective teachings of Vantalon, Bertram, and Bacon.

CONCLUSION

The Examiner did not err in rejecting claims 1-15 under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision rejecting claims 1-15 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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